

Applicant : Ricardo Azpiroz et al.
Serial No. : 09/502,426
Filed : February 11, 2000
Page : 6 of 8

Attorney's Docket No.: 11696-070001

REMARKS

Claims 58-89, 91-123, and 127-132 are pending. The Examiner rejected claims 58-61, 63-70, 72-79, 82-87, 91-123, and 127-132; objected to claims 62, 71, and 80; and allowed claims 88 and 89. Applicants have herein cancelled claims 58-61, 67-79, 85, 87, 92, 94-96, 101-114, 119-132; and amended claims 62, 63, 80, 82-84, 86, 87, 91, and 115. Support for the amendments can be found throughout the specification and the claims as originally filed. For example, claims 62 and 80 have been amended to incorporate the limitations of the rejected base claims from which they depend. Claims 63 and 82-83 have been amended to depend from amended claims 62 and 80. Claims 86, 91, and 115 have been similarly amended to depend from or recite limitations from allowed and/or amended claims. No new matter has been added. Accordingly, claims 62-66, 80-84, 86, 88-89, 91, 93, 97-100, 115-118 are pending.

In light of the amendments and the remarks herein, Applicants respectfully request entry of the above amendments, which raise no new issues that would require further consideration and/or search, and which place the application in better condition for allowance or appeal.

Request for Initialed PTO Form 1449

Applicants respectfully request the Examiner to initial and return the PTO Form 1449 mailed January 29, 2004. A copy of the PTO Form 1449 is attached for the Examiner's convenience.

Rejections under 35 U.S.C. § 112, first paragraph (written description)

The Examiner rejected claims 58-61, 63-70, 72-79, 82-87, 91-123, and 127-132 as failing to comply with the written description requirement for the reasons of record stated in the Office Action mailed February 4, 2004. Applicants respectfully disagree for the reasons of record stated in the Responses filed August 4, 2004 and November 16, 2004. Applicants submit that the unamended claims did meet the written description standard for nucleic acid and polypeptide sequences as enunciated by the Federal Circuit in Enzo Biochem, Inc. v. Gen-Probe, Inc., 323

Applicant : Ricardo Azpiroz et al.
Serial No. : 09/502,426
Filed : February 11, 2000
Page : 7 of 8

Attorney's Docket No.: 11696-070001

F.3d 956 (Fed. Cir. 2002). In order to further prosecution and to put the claims in better condition for allowance and/or appeal, however, Applicants have herein cancelled certain claims and amended claims 62-66, 80-84, 86, 91, 93, 97-100, 115-118. These claims as amended recite a polypeptide having the amino acid sequence set forth in SEQ ID NO: 2. Applicants respectfully assert that, upon entry of the amendments above, all of the pending claims would be allowable. Accordingly, Applicants respectfully request withdrawal of the rejection.

Rejections under 35 U.S.C. § 112, first paragraph (enablement)

The Examiner rejected claims 58-61, 63-70, 72-79, 82-87, 91-123, and 127-132 under 35 U.S.C. § 112, first paragraph, as not being enabling for polynucleotide sequences that do not encode SEQ ID NO:2 for the reasons of record stated in the Office Action mailed February 4, 2004. Applicants note that the Examiner acknowledged that the specification was enabling for polynucleotides encoding SEQ ID NO:2, plant host cells, transgenic plants comprising a polynucleotide encoding SEQ ID NO:2, methods of making the same, and methods for producing a polypeptide having SEQ ID NO:2.

Applicants respectfully disagree, for the reasons of record stated in the Responses filed August 4, 2004 and November 16, 2004. In order to further prosecution and to put the claims in better condition for allowance and/or appeal, however, Applicants have amended the claims as indicated above to recite a polypeptide having the amino acid sequence set forth in SEQ ID NO: 2. Applicants respectfully assert that, upon entry of the amendments above, all of the pending claims are allowable. Accordingly, Applicants respectfully request withdrawal of the rejection.

Applicant : Ricardo Azpiroz et al.
Serial No. : 09/502,426
Filed : February 11, 2000
Page : 8 of 8

Attorney's Docket No.: 11696-070001

CONCLUSION

Applicants respectfully submit that all claims are in condition for allowance upon entry of the above amendments, which action is requested. The Examiner is invited to telephone the undersigned if such would expedite prosecution.

No fee is believed due. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: Mar 30, 2005

Ronald C. Lundquist
Ronald C. Lundquist, Ph.D.
Reg. No. 37,875

Fish & Richardson P.C., P.A.
60 South Sixth Street
Suite 3300
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696

60284703.doc